Pertinent sections of Chapter 253, Florida Statutes:

Section 253.13 "Trustees have power to sell; notice required; objections":

"The trustees of the internal improvement fund may sell and convey the islands and submerged lands, granted by section 253.12, upon such prices and terms as they see fit, after giving notice by publication in a newspaper published in the county seat of the county, in which such islands or submerged lands are located, not less than once a week for four consecutive weeks, in order that any persons who have objections to such sale may have opportunity to present the same; and, if no objections are filed within the said 30 days, the trustees have authority to consummate such sale. If objections are filed, the trustees shall hear and consider the same and, if it appears that the sale of such islands and submerged lands and their ownership by private persons would interfere with the rights granted riparian owners by the laws of Florida, or would be a serious impediment to navigation or public fisheries, the trustees shall withdraw the said lands from sale."

Section 253.14. "Rights of riparian owners; trustees to defend suit":

"It is expressly provided that nothing contained in this chapter shall be so construed as to deprive any private riparian owner from bringing an injunction suit in equity against the sale provided for in section 253.13 on the ground that he would be thereby deprived of his riparian rights granted to him by law; provided, that such suit must be commenced within thirty days after the trustees shall have overruled the objections of such owner to such proposed sale.

"In case suit is brought by any private owner to enjoin such sale it shall be in the discretion of the

trustees to defend such suit or to withdraw said land from sale."

(Note: The foregoing provisions were in force during the sale and grant to petitioners. In 1957, section 253.14, was expressly repealed and section 253.13, materially changed by Chapter 57-362, Laws of 1957, so that under the law as changed the land or a substantial portion of it could not be granted to petitioners, should that re-apply to purchase it as provided by the final decree.

FINAL DECREE (R. 1, 22-25).

(Caption Omitted.)

"THIS CAUSE came on to be heard upon the pleadings filed herein and testimony produced before the Court together with briefs filed by the Plaintiffs and Defendants.

The material facts in this case are substantially as follows:

The Plaintiffs, E. Romle Romine and Marian S. Romine, his wife, are the owners of upland property in the Bay of Florida in Monroe County, Florida. The Defendants are also the owners of upland property in the Bay of Florida in Monroe County, Florida. The Bay of Florida is a bay of the sea. The property of said Plaintiffs is near but not adjacent to the property of the Defendants.

In October, 1951, the Defendants applied to the Trustees of the Internal Improvement Fund of the State of Florida, one of the Plaintiffs herein, for a grant of submerged land alleged to be immediately adjacent to the uplands of the Defendants and as a part of said application, the Defendants supplied the said Trustees with a meager surveyor's sketch or drawing depicting the Defendants' upland property and the said sketch did not present the whole picture of the

rights of other upland owners in the vicinity including the Romines. The Defendants failed to show in said sketch the property of the Plaintiffs, Romines, and failed to show that the grant of such lands might infringe on the riparian rights of the said Plaintiffs and others not parties to this suit.

The Trustees relying on the representations made to them by the Defendants on January 16, 1952, granted to the Defendants for the sum of $276.00, the following described lands, to-wit:

> Commencing on the NW corner of Lot 18, VACA VILLAGE SUBDIVISION, a Resubdivision of Lots 7 and 8 OF THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2 at Page 24 of the Public Records of Monroe County, Florida, THE POINT OF BEGINNING, being on the M.H.W. Line of the Bay of Florida; thence North 700.00 feet; thence East 85.973 feet; thence South 690.38 feet to M.H.W. Line of the Bay of Florida; thence meandering the M.H.W. Line Southwesterly to the Point of Beginning. Containing 1.38 acres, more or less, and lying and being in Section 10, Township 66 South, Range 32 East, Monroe County, Florida.

The said grant was made by the Trustees on the application of the Defendants under and by virtue of Chapter 253, Florida Statutes. The Defendants disclosed to the Trustees only information between their property and the water and did not supply any information on any other property which faced the same body of water.

The Defendants are the present record title owners to the lands herein described. By this litigation, the Plaintiffs seek to set aside the deed from the Trustees to the Defendants.

The Court finds as follows:

(a) That the Defendants made an application to the said Trustees without making full disclosures and

the Trustees relying upon the application executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland property owned by the Romines and others.

(b) That the equities in this case are with the Plaintiffs and against the Defendants and that the deed executed by the Trustees to the Defendants should be set aside and that the Defendants should recover the sum of $276.00 which is in the registry of this Court as restitution.

(c) That the Motion to Dismiss heretofore filed by the Defendants should be denied. It is therefore

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Motion to Dismiss the Amended Complaint filed by the Defendants be and the same is hereby denied.

2. That certain deed numbered 19969, dated January 16 1952, wherein the Trustees of the Internal Improvement Fund of the State of Florida are Grantors and Harold D. Cramer and Viola B. Cramer are Grantees, recorded in Book G-63, at Page 107 of the Public Records of Monroe County, Florida, for the grant, bargain, sale and conveyance of the following described lands, to-wit:

Commencing on the NW corner of Lot 18, VACA VILLAGE SUBDIVISION, a Resubdivision of Lots 7 and 8 of THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida, THE POINT OF BEGINNING, being on the M.H.W. Line of the Bay of Florida; thence North 700.00 feet; thence East 85.973 feet; thence South 690.38 feet to M.H.W. Line of the Bay of Florida; thence meandering the M.H.W. Line Southwesterly to the Point of Beginning, Containing 1.38 acres, more or less, and lying

and being in Section 10, Township 66 South, Range 32 East, Monroe County, Florida.

be and the same is hereby set aside and cancelled of public record. The Clerk of this Court is ordered and directed to cancel said deed of record and to pay to the Defendants, Harold D. Cramer and Viola B. Cramer, the sum of $276.00 heretofore paid into the Registry of this Court by the Plaintiffs, Trustees, as restitution to said Defendants.

3. The Defendants are enjoined from filling in or bulkheading any submerged lands supposedly granted by virtue of the deed herein described.

4. The Plaintiffs, Romines, and the Defendants, Cramers, may re-apply to the Plaintiffs, Trustees, for a grant of the said submerged lands, and the Plaintiffs, Trustees, shall preserve the riparian rights of the upland owners as near as practical so as to equitably distribute the said submerged lands between all interested upland owners.

5. The costs in this cause shall be borne by each of the parties who has incurred the same.

DONE AND ORDERED in Chambers, at Key West, Monroe County, Florida, this 8th day of December, A.D., 1958.

s Aquilino Lopez, Jr.,
Circuit Judge.

District Court of Appeal, judgment and opinion of affirmance, caption and formal parts omitted:

"PER CURIAM.

"Affirmed. See Hayes v. Bowman, Fla. 1957, 91 So.2d 795." (R. 2, 2).

Order denying petition for rehearing:

"Counsel for appellants having filed in this cause petition for rehearing, and it having been considered,

it is ordered that said petition be and the same is denied." (R. 2, 8).

Supreme Court of Florida, order denying certiorari, caption and formal parts omitted:

"This cause having been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, Third District, in said cause bearing date September 24, 1959, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied." (R. 3, 6).

Order denying petition for rehearing:

"On consideration of the Petition for Rehearing filed by Attorney for Petitioners,

IT IS ORDERED by the Court that said petition be, and the same is hereby denied." (R. 3, 11).

Extracts from petitioners' main brief in the District Court of Appeal, Third District, raising the question of lack of due process:

"The theory of appellees, as shown by their pleading (R. 1-11), was that it is essential to the validity of appellants' grant that in applying for same they should have furnished the Trustees with such facts, information and data that upon the basis of that alone the Trustees could act, independently of any investigation by them or use of any maps, data or other information in their hands or available to them in the discharge of their official duties. That the appellants did not do this but had they done so the Trustees would not have made the grant to them; that the Romines, appellees, are entitled to purchase the bottoms sold to appellants, or a portion thereof.

"This theory shows up in the final decree, in the basic finding that 'the Trustees relying upon the ap-

plication' which was minus 'full disclosures' executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland owned by the Romines and others.

"The appellants will contend, among other things, that this finding exceeds the allegations of the amended complaint bill and is not supported by the evidence or anything in the record." (Pages 2-3).

"POINTS INVOLVED.

"1. The amended bill does not state a cause of action nor is it supported by the evidence or anything in the record. (Assignments of Error, 1-4, 9-11)." (Page 6).

"Actually, the only thing of substance proven by appellees was the said simple admitted fact that appellants' application showed nothing more nor less than their own upland with the desired bay bottoms adjacent thereto." (Page 8).

"There is no allegata nor probata in the record denying the presumption that the trustees obtained and had all of the facts and information which they should have had to make the sale and grant." (Page 21).